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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

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11 KENNETH I. EDMONTON, No. CIV S-05-0855-LKK-CMK-P

12 Petitioner,

13 vs. ORDER

14 STATE OF CALIFORNIA,

15 Respondent.

16 _____ /
17 Petitioner, a civil detainee proceeding pro se, brings this petition for a writ of
18 habeas corpus pursuant to 28 U.S.C. § 2254 challenging his continued civil commitment as a
19 sexually violent predator.

20 On May 29, 2007, the court issued findings and recommendations that the petition
21 be denied. The findings and recommendations were adopted in full on August 2, 2007, and a
22 certificate of appealability was issued on October 11, 2007. In particular, the District Judge
23 certified the following issue for appeal:

24 In his habeas corpus petition, the petitioner alleged that the state
25 had violated his due process rights by failing to extend his commitment in
accordance with state statute. The petitioner asserts that the state was
26 required to submit current psychiatric evaluations when seeking
recommitment in 2004, and could not simply resubmit those produced in

1 2002. (footnote omitted). It appears that California law supports the
2 petitioner's position. See Butler v. Superior Court of Santa Cruz County
3 (The People), 78 Cal. App. 4th 1171 (Cal. Ct. App. 2000); Cal. Welf. &
4 Inst. Code §§ 6601(d), 6604.

5 An individual's federal due process rights may be implicated when
6 a state erroneously applies state law. Hicks v. Oklahoma, 447 U.S. 343
7 (1980). This failure properly [to] apply state law can be a basis for habeas
corpus relief under AEDPA. Bradley v. Duncan, 315 F.3d 1091, 1096-97
8 (9th Cir. 2002). Petitioner has shown that "reasonable jurists" could
9 disagree on whether the state's alleged error in filing its 2004 petition for
recommitment constituted a violation of the petitioner's federal due
process rights. See Slack v. McDaniel, 529 U.S. 473, 484. Therefore, the
10 certificate of appealability should issue. Id.

11 Petitioner appealed and the Ninth Circuit Court of Appeal issued a memorandum disposition on
12 April 23, 2009, vacating and remanding in which it stated:

13 Edmonton contends that the State of California violated his federal
14 due process rights by failing to submit current psychiatric evaluations
15 when seeking his recommitment in 2004, and by filing a complete petition
16 for recommitment only after expiration of the prior period of commitment.
17 In the district court's order granting a certificate of appealability on this
18 claim, the district court recognized that the magistrate judge's Findings
19 and Recommendations, which it adopted in full, misunderstood
Edmonton's allegations to refer strictly to the timeliness of the district
attorney's petition for recommitment, rather than to whether the initial
petition itself was valid in light of the State's failure to submit updated
psychiatric evaluations. After reviewing the record, it appears likely that
the State of California failed to follow the commitment procedures set
forth in the SVPA, and that this failure may have resulted in a violation of
Edmonton's federal due process rights. See Hicks v. Oklahoma, 447 U.S.
343, 346 (1980); *see also Jackson v. Cal. Dep't of Mental Health*, 399
F.3d 1069, 1072 (9th Cir. 2005). Accordingly, we vacate the judgment
and remand to the district court for consideration of the issue as stated in
the district court's order granting a certificate of appealability, and for a
determination of the appropriate relief to which Edmonton may be
entitled.

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21 The mandate issued on May 19, 2009, and the Ninth Circuit's judgment became final.

22 As the Ninth Circuit recognized, petitioner challenges both the timeliness of the
23 recommitment order as well as the lack of current psychological evaluations. However, the
24 District Judge's certificate of appealability only references the latter issue. Therefore, the Ninth
25 Circuit's remand order is limited to the issue "whether the initial petition itself was valid in light
26 of the State's failure to submit updated psychiatric evaluations." The District Judge did not

1 certify for appeal the timeliness issue and the Ninth Circuit did not address that issue.

2 The parties will be required to submit supplemental briefs on the issue now before
3 the court pursuant to the Ninth Circuit's remand. In briefing this issue, the parties should also
4 address the appropriate relief available to petitioner in the event the court concludes that his due
5 process rights were violated. Upon completion of supplemental briefing, the matter will stand
6 submitted.

7 Accordingly, IT IS HEREBY ORDERED that:

8 1. Petitioner shall file a supplemental brief within 30 days of the date of this
9 order; and

10 2. Respondents shall file a supplements brief within 30 days after the date of
11 service of petitioner's supplemental brief.

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13 DATED: May 21, 2009

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15 CRAIG M. KELLISON
16 UNITED STATES MAGISTRATE JUDGE

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